

DARRELL DUANE SMITH
2/26/2024

MULLICAN, et al. v. STATE FARM
No. 5:23-cv-160-G

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

STEPHEN MULLICAN and
KELLEY MULLICAN,

Plaintiffs,

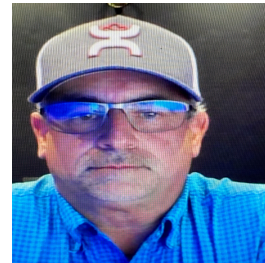
-vs-

STATE FARM FIRE AND
CASUALTY COMPANY,

Defendant.

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No. 5:23-cv-160-G



VIDEOCONFERENCE DEPOSITION OF DARRELL DUANE SMITH

TAKEN ON BEHALF OF THE DEFENDANT

IN BEN WHEELER, TEXAS,

ON FEBRUARY 26, 2024

REPORTED BY: ELIZABETH J. CAMPBELL, CSR #162, RPR

ELIZABETH CAMPBELL, CSR, RPR
405-826-2015 oklahomareporter@gmail.com

EXHIBIT 2

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APPEARANCES

(All parties appearing remotely via Microsoft Teams)

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED BY and between the parties hereto, through their respective attorneys, that the videoconference deposition of DARRELL DUANE SMITH may be taken on behalf of the Defendant on February 26, 2024, in BEN WHEELER, Texas, by Elizabeth J. Campbell, a Certified Shorthand Reporter for the State of Oklahoma, pursuant to Subpoena and Agreement and in accordance with the Federal Rules of Civil Procedure.

IT IS FURTHER STIPULATED AND AGREED BY and between the parties hereto, through their respective attorneys, that all objections, except as to the form of the question and responsiveness of the answer, are reserved until the time of trial, at which time they may be made with the same force and effect as if made at the time of the taking of this deposition.

* * * * *

ELIZABETH CAMPBELL, CSR, RPR

405-826-2015 oklahomareporter@gmail.com

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DARRELL DUANE SMITH,
being first duly sworn, deposes and says in reply to
the questions propounded as follows

* * * * *

(Proceedings commenced at 1:37 p.m.)

DIRECT EXAMINATION

BY MR. MORRIS:

Q Sir, would you please state your full name
for the record.

A Darrell Duane Smith.

Q Mr. Smith, we are taking this deposition via
videoconference. Mr. McKeever and Elizabeth and I are
all in various locations in Oklahoma City, I think.

If I understand correctly, you are in Texas
near the Dallas/Fort Worth metroplex; is that correct?

A Yes, sir.

Q We've all agreed, just so we've got a clean
record, stipulated and agreed that we'll take the
deposition this way. That saves Terry and me from
driving down there or you from driving up here. Save
everybody some funds. But for no other reason, I
would have been incentivized to drive to Waco and
watch my Bears lose in person over the weekend which
would have made me sad.

A Okay.

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1 not a particular property that's had a loss can be
2 repaired or just needs to be torn down and replaced
3 entirely?

4 **A** Correct. Yes, sir. And that was -- go
5 ahead.

6 **Q** And that only really comes into play if one
7 of the costs, either the repair or the replacement
8 cost is going to be under the limits; right? Because
9 if it's over the limits, it doesn't really matter what
10 you do, you're going to get paid the same amount
11 either way; correct?

12 **A** Correct. And that's -- and I think that's
13 what the engineer was alluding to as well. That's
14 kind of what I was seeing that it looked like to me
15 that it was, you know, it was going to max the policy
16 out based on what the repairs were going to be, you
17 know and so -- and that's -- the amount of the State
18 Farm estimate was already pretty high.

19 I don't remember what -- you know, where the
20 differences was but, you know, they -- it wasn't that
21 they did a terrible job. It's just, you know, by the
22 time you put the engineer report into play of all the
23 stuff that needed to be in the estimate, I think
24 that's where the differences really came out.

25 **Q** And if I remember correctly, based on what

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1 was in your file that I received and what was on the
2 list of information you reviewed, you never looked at
3 the policy; correct?

4 A I don't think I ever looked at the policy.
5 I think I looked at the -- because I remember seeing
6 the numbers somewhere. It must have been on the State
7 Farm estimate. It might have said some kind of
8 coverage or something, that I recall.

9 I was kind of wondering, you know, based on
10 what I was seeing versus what the engineer was saying
11 versus what State Farm had already written for, you
12 know, the feasibility there was going to be real
13 close.

14 Q Let me show you. I've got to find it in one
15 second and then we'll take a break here in a minute.

16 A Okay.

17 Q Okay. So, Mr. Smith, this is your report;
18 right?

19 A Correct.

20 Q Here you've got listed materials reviewed,
21 the engineer report you mentioned, State Farm's
22 estimate, the Oklahoma County Assessor's website, fire
23 department report, some photographs and the
24 Matterport.

25 A Yes.

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1 Q It doesn't list the insurance policy;
2 correct?

3 A No. I don't -- I don't believe I had access
4 to the policy.

5 Q If that's something you did have access to
6 and reviewed, would you have listed it here?

7 A Yes, sir.

8 Q Okay. Let me ask you one other thing while
9 we're here. So this is your 544 page file that I
10 received.

11 A Okay.

12 Q We've got one copy of the report here what's
13 been Bates starting at 275, five pages and then we've
14 got another copy down here starting at 540. It looks
15 to me like this is the same report included twice.

16 Are there different drafts or versions of
17 the report, to your knowledge?

18 A Not that I'm aware of unless I went back and
19 updated something. I don't -- I don't remember doing
20 that but that would -- unless it just got put in there
21 twice for whatever reason.

22 Q Okay. I just wanted to see if I could get
23 some clarification on that.

24 MR. MORRIS: Let's take about a 10-minute
25 break. It's 2:39 so let's come back at 2:50.

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1 Because pricing alone just with COVID, you know, was a
2 20 to 30 to 40 percent increase, and then in 2020
3 hurricane season was another huge increase.

4 So, you know, for it to be an estimate that
5 size for it to be an \$80,000 swing is probably not,
6 you know, that wide of a variance.

7 Q Let's look. Here's his estimate. Looks
8 like he's using a February 2021 OKC price list; right?

9 A Okay.

10 Q This is at Mullican-Smith_001. Then we go
11 down to your estimate. Looks like you're using a
12 November 23 OKC price list; right?

13 A Yes, sir.

14 Q So do you think that's probably the majority
15 of the difference?

16 A I would say, you know, it's possible that I
17 got some, you know, additional line items, you know,
18 just like you mentioned earlier about, you know,
19 finding supplements, you know.

20 There might be some things that I picked up
21 on, you know, based on what the engineer said needed
22 to be done that I included that maybe the adjuster or
23 the public adjuster didn't include, and then you take
24 that into account, you know, a few additional line
25 items. Plus the, you know, almost two-year difference

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1 recalculated.

2 Q How long does that take?

3 A Oh. I'd say 10 or 15 minutes maybe.

4 Q Okay.

5 MR. MCKEEVER: No further questions at this
6 time.

7 REDIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Smith, have you been asked to do
10 anything like that, i.e. calculate anything regarding
11 a different price list to date?

12 A Have I?

13 Q Yes.

14 Have you been asked to do that?

15 A No. If you all need me to.

16 Q Is there anything regarding calculations
17 using a different price list anywhere in the report
18 that you produced in this matter?

19 A No.

20 MR. MORRIS: That's all I have.

21 MR. MCKEEVER: You have the right to review
22 your deposition transcript and review it and, you
23 know, and you may have done this before in your other,
24 to review for typographical errors and correct that
25 with an errata sheet or you can waive that review.

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J U R A T

STATE OF _____)
COUNTY OF _____) SS:

I, DARRELL DUANE SMITH, do hereby state
under oath that I have read the above and foregoing
deposition in its entirety and that the same is a
full, true and correct transcription of my testimony
so given at said time and place, except for the
corrections noted.

() CORRECTIONS ATTACHED

() NO CORRECTIONS

DARRELL DUANE SMITH

Subscribed and sworn to before me, a Notary
Public in and for the State of _____ by
said witness, DARRELL DUANE SMITH, on this, the
_____ day of _____, 2024.

Notary Public in and for the State of

My Commission Expires: _____

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2	DEPOSITION OF DARRELL DUANE SMITH		
3	IN RE: MULLICAN, et al. vs. STATE FARM; 5:23-cv-160-G		
4	DATE: FEBRUARY 26, 2024		
5	REPORTER: ELIZABETH J. CAMPBELL, CSR, RPR		
6	TRIAL DATE: N/A		
7	PG/LN	CORRECTION	REASON FOR CORRECTION
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ELIZABETH CAMPBELL, CSR, RPR
405-826-2015 oklahomareporter@gmail.com

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	PG/LN	CORRECTION	REASON FOR CORRECTION
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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, ELIZABETH J. CAMPBELL, a certified shorthand reporter within and for the State of Oklahoma, certify that DARRELL DUANE SMITH was by me sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the testimony of the witness; that the deposition was taken on February 26, 2024, at 1:37 p.m., Ben Wheeler, Texas; that I am not an attorney for or a relative of any party, or otherwise interested in this action.

Witness my hand and seal of office on this the 27th day of February, 2024



Elizabeth J. Campbell, CSR
Oklahoma CSR No. 162
Expires December 31, 2024



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MEMORANDUM

TO: DARRELL DUANE SMITH
duane@boviniconsultants.com

FROM: ELIZABETH CAMPBELL, CSR, RPR
5505 N. Brookline Avenue, #1504
Oklahoma City, Oklahoma 73112

DATE: February 28, 2024

STYLE: MULLICAN, et al. vs. STATE FARM;
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Please read your deposition in the above-styled case and sign the jurat page before a notary public. Also, make any needed corrections on the enclosed errata sheet and not directly on the transcript.

Please return the signed jurat page and errata sheet to my office within 30 days from the date of this letter so that I can forward the original deposition transcript to the attorney who took the deposition.

If I do not receive the signed jurat and errata sheet back within 30 days, I will file the original deposition as is with the attorney who took the deposition.

Thank you for your attention and cooperation in this matter.

OA: MR. ANDREW MORRIS
MR. TERRY MCKEEVER

ELIZABETH CAMPBELL, CSR, RPR
405-826-2015 oklahomareporter@gmail.com